

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
May 22, 2007

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 22, 2007 at 6:30 PM in the Auditorium at City Hall.

Sean Duffy, Chair, conducted the meeting.

Members present were: Sean Duffy, Chair
Jack Currier, Vice Chair
Claire McHugh
Rob Shaw
Robert Carlson (arrived at 6:45)
Carter Falk, Deputy Planning Manager/Zoning

Mr. Duffy explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Duffy explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Duffy also explained procedures involving the timing light.

- 1. Stephen P. Murphy & Karen A. Greenwood (Owners) Frank Queen & Son (Applicant) 101 East Glenwood Street (Sheet 129 Lots 145-146) requesting special exception to allow an accessory (in-law) dwelling unit. RA Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Claire McHugh
Robert Carlson - not voting on this case

Frank Queen, 35 Massachusetts Drive, Nashua. Mr. Queen identified himself as the contractor performing the work. He said the addition is 14'x20', and they will use 110 square feet within the house to add to the in-law apartment. Mr. Queen went over the points of law required for a special exception. Mr. Queen went over the accessory dwelling unit criteria to the Board's satisfaction.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Shaw to grant the special exception to allow an accessory dwelling unit. Mr. Shaw stated that it is listed in the Table of Uses, Section 16-61, and as per testimony given by the applicant, will meet all the criteria that are stated within. There is no evidence that there will be any impact to creating undue traffic congestion or impairing pedestrian safety, likewise, there will be no impact on overloading any of the public water, sewer, drainage or other municipal systems. The special regulations are fulfilled, and the accessory dwelling unit does not appear to have any negative impact on the character of the neighborhood, or provide any detriment to the health, morals or welfare of the residents, and moves to grant the special exception.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 4-0.

2. M. Jeanne Ott (Owner) 18 Durham Street (Sheet F Lot 739) requesting variance to encroach 10 feet into the 30 foot rear yard setback to replace an existing deck and construct a new 10'x12' deck. R9 Zone.

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Claire McHugh
Robert Carlson

Jeanne Ott, 18 Durham Street. Ms. Ott stated she is requesting a variance to replace a deck that is not to code, without a building permit, with one that will meet the code. She said the house had a deck on it originally, then the house was sold, and another deck was put in, and it needs to be replaced because it is unsafe. She said she has oversized slider doors that provide a secondary means of egress, and she is also doing this for safety reasons. The deck will be 10'x12' in size, and will be an open deck.

SPEAKING IN FAVOR:

Steve Richer, 26 Daytona Street, Nashua. Mr. Richer reiterated the points made by Ms. Ott, and stated there was no permit or variance for the old deck. She wants to do everything correct, and up to code. The deck would be replacing what was there.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Shaw on behalf of the owner, to grant the variance. Mr. Shaw stated that the variance is needed to enable the applicants continued use of the property, and given the special conditions of the property is the fact that there has been existing deck structures at this residence for apparently the entire time the dwelling has been in place. It allows a reasonable use of the property considering the construct of the house with the slider door that is a secondary exit from the primary living space and allows the safe and reasonable use continuing by the place of that structure.

Mr. Shaw stated that it certainly is within the spirit and intent of the ordinance, there's no testimony that there will be any negative impact to any property values of surrounding parcels, and given the further special condition of the PSNH trunk lines property behind the dwelling as well, there's even less impact to any use by any of the neighboring properties.

Mr. Shaw stated that it is not contrary to the public interest, and substantial justice will be served by allowing the owner to continue to use the property as it has been used thus far, so the motion is to grant.

SECONDED by Mr. Carlson.

MOTION CARRIED UNANIMOUSLY 5-0.

3. **Matthew & Jeannette Erickson (Owners) 68 & 74 Nagle Street (Sheet 102 Lots 102 & 168) requesting the following variances: 1) minimum lot area, 5,500 sq.ft existing, 7,500 sq.ft proposed - 18,668 sq.ft required, and 2) minimum lot depth, 80 feet required, 70 feet proposed - to allow for a lot line relocation to increase the size of a non-conforming lot. RB Zone.**

Voting on this Case:

Sean Duffy
Jack Currier
Rob Shaw
Claire McHugh
Robert Carlson

Attorney Andrew Prolman, 20 Trafalgar Square, Nashua, NH. Atty. Prolman passed out an exhibit, and placed some plans on the Board. He mentioned the applicants own the lot at 68 Nagle Street, and Erickson Construction owns 74 Nagle Street, and the lots abut one another. The lots are considered merged together per Section 16-304. The goal is to resubdivide the lots into two lots, with a lot line relocation. Atty. Prolman showed a plan from 1890, which is the original layout of this neighborhood. They were 50'x100' lots, not all that uncommon at that time. The lots have technically merged. They are planning on adding 20 feet 68 Nagle Street onto 74 Nagle Street.

Atty. Prolman went over the exhibits that he provided. He said the neighbors are pleased with the maintenance work that has been going on so far. Sidewalks will be installed around the corner of Nagle Street and Pine Street. Parking spaces will be revised with a new driveway.

Atty. Prolman went over the points of law for the area variances, one for the lot area, and the other for lot depth.

Discussion ensued between the Board and the applicant.

Atty. Prolman mentioned that if necessary, they could revise the proposed lot line another ten feet to the north, but believe the proposed plan is the best for the proposed new lot.

Mr. Currier asked how many off-street parking spaces would be available.

Atty. Prolman said at least four spaces. He said with the new driveway being built, there is space for the five required parking spaces.

Mr. Currier said he believed he'd rather see the lot line shifted another ten feet to the north to better accommodate parking.

Atty. Prolman said this would remove the variance for the lot depth, as it would be the minimum of 80 feet deep, and make the

lot with the three units less nonconforming. He said he would withdraw the variance for the lot depth. This would also add another 1,000 square feet to the 74 Nagle Street lot.

SPEAKING IN FAVOR:

No One.

SPEAKING IN OPPOSITION OR WITH CONCERNS:

No One.

MOTION by Mr. Duffy to grant a variance for minimum lot area, the applicant has agreed to move the proposed lot line relocation from 20 feet to 30 feet from the existing property line. He stated the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, the property is a three-unit system that predates zoning and structure and lot size, it is being proposed for lot line relocation to make a nonconforming parcel more conforming to the Nashua ordinances, even though it is not in full compliance. He stated that it is a reasonable, feasible method for the applicant to pursue, given the relocation of parking onto the site that is not existing on the current site, and it still leaves a fully conforming lot at 74 Nagle Street.

Mr. Duffy stated that the spirit and intent of the ordinance is matched in that the lot line relocation is solely for relocation of a lot line to provide for a single-family home to be developed on the adjoining lot behind this property.

Mr. Duffy said it should not adversely affect the property values of surrounding parcels, even though there was no expert testimony on that this evening.

Mr. Duffy stated that the surrounding uses on the abutting properties are a very mixed use of sizes and shapes, it is not contrary to the public interest, and substantial justice is served that a nonconforming use is made more conforming.

Mr. Duffy said the special conditions are that the applicant has testified that they will install adequate, and up to the city's specification - sidewalks. Also, the approved use of this lot line relocation by voluntary testimony has been the new use at 74 Nagle Street, Lot 164, is solely for the purpose of single-family house size, the applicant will be within all the current setbacks, front, rear and side yard setbacks, and the applicant

understands that this is solely the purpose of granting the area variance.

Mr. Shaw said the variance should reflect the change to 8,500 square feet.

Mr. Duffy said it should read 5,500 square feet existing, 8,500 square feet proposed.

Mr. Shaw asked if Mr. Duffy would be agreeable that no additional accessory uses for the property at 68 Nagle Street with the expanded area of that lot.

Mr. Duffy asked if Mr. Shaw would be seconding the motion if that were to be added.

Mr. Shaw agreed.

Mr. Duffy stated that the applicant is aware that accessory uses such as garages, sheds, structures of significant size and shape, existing units, changes to the foundation, etc.

SECONDED by Mr. Shaw.

MOTION APPROVED UNANIMOUSLY 5-0.

MINUTES:

April 24, 2007:

MOTION by Mr. Duffy to accept the minutes, waive the reading, and place them in the file.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

Mr. Falk said that the agenda is not prepared yet, as there is an extra week for applicants to apply. He said there are two cases, and neither one is a regional impact case.

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Mr. Duffy said that staff will contact Corporation Counsel to have an executive meeting at 5:30 before an upcoming meeting to go over current issues.

ADJOURNMENT:

Mr. Duffy called the meeting closed at 7:50 p.m.

Jack Currier
Acting Clerk

CF

Taped Hearing